



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/145604

PRELIMINARY RECITALS

Pursuant to a petition filed November 29, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on March 14, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$897 for the period of July 15 – 31, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Tameika Terrell

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On July 14, 2012, Petitioner's employment was terminated.

3. On July 16, 2012, the agency issued a Child Care Authorization notice to the Petitioner informing her that enrollment-based authorizations were approved for her two children for the period of July 8, 2012 – September 1, 2012. The authorization informed the Petitioner of the requirement to report changes in employment within 10 days to the child care worker.
4. On or about July 17, 2012, the Petitioner contacted the agency.
5. On July 26, 2012, the Petitioner signed the child care signature page. It was returned to the agency on August 1, 2012.
6. On July 27, 2012, the agency received verification that the Petitioner's last day of employment was July 14, 2012. The agency ended the Petitioner's authorizations on August 4, 2012.
7. On October 26, 2012, the agency issued a Child Care Overpayment Notice and worksheet informing the Petitioner that the agency intends to seek to recover an overissuance of child care benefits in the amount of \$897 for the period of July 15 – 31, 2012.
8. On November 29, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

All child care funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stats., § 49.155(1m).

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by it is proper given the facts of the case. If the agency meets its burden, the Petitioner must then rebut the agency's case and establish facts sufficient to overcome the agency's evidence of correct action.

The child care subsidy program's authorizing statute contains financial and nonfinancial eligibility criteria. If parents do not meet the eligibility criteria, then they are not eligible for child care (CC) benefits. Wis. Stats., §49.155(1m). In this case, the agency asserts that the Petitioner was not engaged in an approved activity during the overpayment period and she was not eligible for child care benefits. Specifically, the agency contends the Petitioner's employment in an unsubsidized job ended on July 14, 2012 and the Petitioner did not notify the agency that her employment ended within 10 days. The agency asserts that the Petitioner continued to utilize child care and her child care authorizations during the period July 15 – 31, 2012.

The Petitioner argues that she contacted the agency on July 17, 2012 to inform the agency that her employment ended. She testified that she was told she could continue to utilize child care for a 10 day grace period. She testified that she was also told that she needed to complete a review and sign the review application page. She completed the review and signed and returned the signature page on July 27, 2012.

Under current law, parents are required to report changes in their household that might affect their child care benefits within 10 days. Agency workers must timely change authorizations in order to ensure that the appropriate level of child care benefit is issued to providers on behalf of parents and avoid overpayments. Wisconsin Shares Child Care Manual, § 3.8.2.

A 10-day notice to providers is required when a parent loses eligibility, except when they failed to report a change that would make them ineligible. Manual, § 3.8.4. If a change is reported within 10 days, the agency must manually end the authorization by counting ahead 10 calendar days, beginning with the current date and ending on the Saturday following the tenth day. If the change was not reported timely, the agency must manually end the authorization the following Saturday. Manual, § 3.8.5 and 3.8.10.

The weight of the evidence in this case leads me to conclude that the Petitioner contacted the agency on or about July 17 and reported that her employment ended. At that time, she was told that because she reported the change in employment within 10 days, the authorization would end as noted in the Manual at Sections 3.8.5 and 3.8.10. I find the Petitioner's testimony to be credible based on her re-statement of agency policy regarding the 10 day "grace period." She re-stated this policy based on what she indicates she was told on the phone by the agency worker when she reported her employment ending.

The agency must recover any overissuance of child care benefits whether the overissuance is due to client or agency error. Manual, § 2.1.5.2. In this case, the agency should have ended the authorizations on July 28, 2012 but did not end the authorizations until August 4, 2012. The agency paid for child care through July 31, 2012. Therefore, the Petitioner is responsible for any overissuance of child care benefits paid for the week of July 29, 2012 – August 4, 2012.

CONCLUSIONS OF LAW

The Petitioner is responsible for any overissuance of child care benefits paid for the week of July 29, 2012 – August 4, 2012. The Petitioner is not responsible to repay child care benefits for the period of July 15 – 28, 2012.

THEREFORE, it is

ORDERED

That this matter be remanded to the agency to rescind the Child Care Overpayment Notice and worksheets issued to the Petitioner on October 26, 2012 and to cease recovery of child care benefits for the period of July 15 – 28, 2012 from the Petitioner. The agency may recover an overissuance of child care benefits from the Petitioner for the period of July 29, 2012 – August 4, 2012. The agency must issue a revised Child Care Overpayment Notice and worksheets for the period of July 29, 2012 – August 4, 2012 to the Petitioner. These actions shall be taken within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

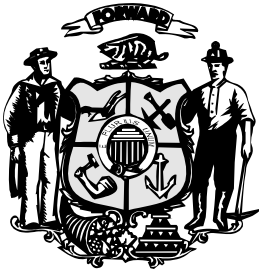
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of April, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 9, 2013.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud